

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

Crl. Revn. No. 2557 of 2006

DATE OF DECISION : 15.12.2006

Chander Bhan

.... PETITIONER

Versus

Mohinder Singh and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Ms. J.S. Yadav, Advocate,
for the petitioner.

* * *

Petitioner Chander Bhan, who is complainant in FIR No. 67 dated 21.3.1995 under Sections 323, 325, 452, 34 IPC, registered at Police Station Bilaspur, has filed this revision petition against the order dated 7.12.2006, passed by Judicial Magistrate Ist Class, Gurgaon, whereby the application filed by the petitioner for examining two doctors and the Investigating Officer has been dismissed, while observing as under :-

“After hearing both the counsels and perusing the case file it is observed that charge against the accused was framed on 14.1.2002. Till 3.2.2006 prosecution could not exhaust the list of witnesses and was warned with the last opportunity. There were still three more adjournments and no witness could be summoned by the prosecution finally evidence of prosecution was closed by court order dated 13.7.06. This perusal is sufficient to decline the request of the applicant mainly for the reason that Magistrate has no powers of reviewing its own order as has been appreciated by Hon'ble High Court. Though purpose of section 311 Cr.P.C. has an object to elicit all necessary material by playing an active role

for the evidence collecting process and to enable court to verify above truth. But at the same time there is no procedure under which the trial court take additional evidence if the evidence is closed specially by court orders. Our Hon'ble High Court in case ***Malvinder Singh Vs. State of Punjab*** has appreciated that where the prosecution has availed as many as 25 adjournments and the warning of last opportunity the order of granting prosecution for examination of witnesses still after the closing of the evidence of prosecution by court order, is not maintainable. Prosecution should also suffer for its negligence. Otherwise also in this case it has been appreciated that phrase “interest of justice” does not mean that prosecution should not suffer for its negligence. The court has to keep a balance. In view of the above discussion the application in hand is dismissed. Now to come upon 18.12.06 for recording the statement of accused under section 313 Cr.P.C.”

After hearing the arguments of learned counsel for the petitioner and going through the impugned order, I do not find any ground to interfere in the same.

Dismissed.

December 15, 2006
ndj

(SATISH KUMAR MITTAL)
JUDGE